PUBLIC PROSECUTOR

v.

MOHD. AJIB HJ. AHMAD

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED DZAIDDIN J
[FEDERAL TERRITORY CRIMINAL TRIAL NO. 15 OF 1983]
16 NOVEMBER 1983

CRIMINAL LAW AND PROCEDURE: *Conviction under s. 193 of the Penal Code - Requirements to sustain - Two contradictory statements - Earlier being false and later being true - Whether accused should be prosecuted for perjury - Penal Code s. 193.*

The accused was charged with perjury, an offence punishable under s. 193 of the Penal Code. The nature of the charge preferred against the accused is that he had on separate occasions made two contradictory statements one of which he either knew or believed to be false or did not believe to be true.

In the present case, to sustain a conviction under s. 193 of the Penal Code, the prosecution must prove beyond reasonable doubt that:-

(1) the two statements are not only contradictory to but irreconcilable with one another;

(2) the statement was false;

(3) the accused knew or believed it to be false or did not believe it to be true;

(4) he made such false statement intentionally.

Held:

[1] The offending contradictions are not substantial and cannot be said to be altogether irreconcilable;

[2] If a witness makes two contradictory statements and the Court finds that he has reverted to the truth in the later statement, it is not desirable that he should be prosecuted for perjury *(Haji Yusof bin Keromo v. P.P.* [1952] MLJ 242 at 243).

Case referred to:

Haji Yusof bin Keromo v. Public Prosecutor [1952] MLJ 242

For the public prosecutor - T.S. Sambanthamurthi, DPP
For the accused - Jagjit Singh; M/s. Jagjit Singh & Co.
- Manjeet Singh Dhillon; M/s. Lawrence, Dhillon & Associates
- Abu Zahar bin Ujang; M/s. Abu Hashim, Zahar & Partners
- Hj. Abdul Mutalib bin Datuk Seri Abdul Razak; M/s. Mutalib & Bakarudin

JUDGMENT

Mohamed Dzaiddin J:

The accused is charged for perjury, an offence punishable under s. 193 of the Penal Code.

The amended charge against him reads as follows:

> That you on the 2 February 1983 in the High Court, at Kuala Lumpur in the Federal Territory, in the course of the trial of Datuk Mokhtar bin Hashim with others in the case of the Federal Territory Criminal Trial No. 9 of 1982 before the Judge in the said High Court

stated in evidence as underlined in such parts of the Notes of Evidence attached herewith marked 'A' and on 19 July 1982, at Majidee Police Station Johor Bahru in the State of Johor in the course of police investigation connected with the same Gemencheh Rpt. 325/83 did make statement as underlined in such parts attached herewith marked 'B' to Encik Azmi bin Osman one of which you either knew or believed to be false or did not believe to be true and that you have thereby committed an offence punishable under s. 193 of the Penal Code.

In the present case, to sustain a conviction under s. 193 of the Penal Code, the prosecution must prove beyond reasonable doubt that the two statements marked 'A' and 'B' are not only contradictory to but irreconcilable with one another. The prosecution must also prove that the statement was false; that the accused either knew or believed it to be false or did not believe it to be true; that he made such false statement intentionally.

It is also clear in this case that the issue of the charge preferred against the accused is that he made two contradictory statements, one of which he either knew or believed to be false or did not believe to be true. It is therefore the duty of this Court first to make a finding whether or not the two statements are contradictory and are altogether irreconcilable.

Let us now deal with the two underlined statements. In annexture 'A' to the charge, which is the notes of evidence of the trial of Datuk Mokhtar Hashim and others (Federal Territory Criminal Trial No. 9 of 1982), the accused in his evidence on 2nd February 1983 at this High Court stated as underlined that on 13 April 1982 he met Rahmat Satiman at about 5.30 p.m. at his house in Kampong Kurnia. The first time he saw him he stayed for about half an hour. He left the accused's house and returned the same day at about 8.00 p.m. Rahmat Satiman returned at 11.00 p.m. After that, he spent the night in the accused's house and left the house at 8.00 a.m. on 14 April 1982.

Under cross-examination by the learned Attorney-General, the accused stated that he remembered it was 13 April 1982 because before Rahmat came his daughter Manisah, rang up the accused's daughter and on the night of 11 April 1982 he rang up Rahmat Satiman's place. First, the accused talked to his daughter, then to Rahmat. Rahmat told him not to be away on 13 April 1982. He did not write down anywhere the date of Rahmat's arrival.

Under further cross-examination, the accused stated that on 13 April 1982 Rahmat came to his house at 5.30 p.m. He was in the house when Rahmat came. The first visit at 5.30 p.m. was after his Asar prayer. He waited for Rahmat. Rahmat left about 6.00 p.m. He did not tell the accused that he wanted to sleep in his house. The second time Rahmat called at his house was at about 8.00 p.m. He was not expecting Rahmat, but he was at home. The second visit was at 8.00 p.m. and he left after half an hour. He left because the accused told him that he (the accused) wanted to go to Masai in a hurry and Rahmat told him that he wanted to send an elderly man back. The accused told him that he was in a hurry to go to Masai because a friend has asked him to look into the arrangements of "barangs" in a provisions shop in Masai to attract people.

He further stated that that night he left for Masai at 8.30 p.m. and arrived at the shop at 9.00 p.m.

In annexture 'B', in answer to questions put to him by ASP Azmi bin Osman (P.W.4), the accused made statement under s. 112 of the answer forms. The underlined portions of this statement state as follows (the translation is mine):

Q: How were you invited by Rahmat to attend the wedding of his daughter?

A: On Tuesday, 13 April 1982, at about 4.30 p.m., I returned from Masai from the shop of Abu Bakar bin Mohd., 163 Jalan Besar, Masai, and on reaching home, my wife named Muspupah informed me that Rahmat had come to the house at about 3.00 p.m. and she said that he would come again at night. That night at about 9.00 p.m., he came to the house alone. We had conversation for about one hour. After that, Rahmat went out again and informed him that he wanted to invite other families for his daughter's wedding. Rahmat returned to my house at about 11.00 p.m. He slept in my house".

Q: Did you make any record in your diary (buku dia) regarding the arrival of Rahmat to your house on the night of 13 April 1982?

A: No. I only crossed it on my calendar.

From the two statements above, I can safely make the following conclusions. First, the material date of 13 April 1982 is never in dispute in both annextures 'A' and 'B'.

Second, the accused has stated in evidence in 'A' that he met Rahmat Satiman at 5.30 p.m. at his house for about half an hour. Under cross-examination by the learned Attorney-General, he stated that Rahmat left at about 6.00 p.m. This was the first visit that Rahmat made on that date. Then accused stated Rahmat returned the same day at about 8.00 p.m. and, under cross-examination, he stated Rahmat left the house after half an hour. The accused told him that he (the accused) was in a hurry to go to Masai and Rahmat had also wanted to send an elderly man somewhere. Accused also stated that Rahmat returned to his house at about 11.00 p.m. and spent the night there until 8.00 a.m. on 14 April 1982. All in all, on 13 April 1982 Rahmat Satiman was in the accused's house at or about 5.30 p.m., 8.00 p.m. and 11.00 p.m.

However, in 'B', accused said that when he returned home at about 4.30 p.m. from Masai his wife told him that Rahmat came at 3.00 p.m. and would call again at night. He did come at about 9.00 p.m. He went out again to invite other families for his daughter's wedding and finally returned home at 11.00 p.m.

Thus far, the difference in the visits of Rahmat Satiman as appearing in 'A' and 'B' appears to be the purported visit at 5.30 p.m. which the accused said in 'A' that he was at home at that particular time. On the other hand, in 'B', he said that he returned home at 4.30 p.m. when his wife told him that Rahmat had come earlier at 3.00 p.m. In addition, there is also difference in timing on the second visit. In 'A', he said Rahmat visited him at about 8.00 p.m. and left at about half an hour later. But in 'B', the second visit was at 9.00 p.m. and left at about one hour later (after their conversation). Therefore, it is not disputed that the offending contradiction is the purported first visit and the presence of the accused in the house when Rahmat called on him. With regard to the timing of the second visit, it is a question of approximation and I find there is no material contradiction.

Third, in 'A', accused stated under cross-examination that he went to the shop at 8.30 p.m. and arrived there at 9.00 p.m. On the other hand, in 'B', he stated he arrived home at about 4.30 p.m. from the shop of Abu Bakar bin Mohd., 163 Jalan Besar, Masai.

Fourth, under cross-examination by the learned Attorney-General, accused stated in 'A' that he did not write down anywhere the date of Rahmat's arrival. However, in 'B', the question asked by P.W.4 was whether the accused had recorded the date 13 April 1982 in his diary.

His answer was "no", but he merely crossed it on the calendar. Here again, I cannot see any material contradiction because the answer given was that he did not write anywhere the date of Rahmat's arrival, whereas in 'B' the question was more specific as it referred to the recording in his diary ("buku dia" which should mean "buku diary").

In my judgment, having considered and compared the offending statements in 'A' and 'B', the only material contradiction relates to the first meeting between the accused and Rahmat Satiman. In this connection, I have borne in mind that the statements themselves were taken and given in different circumstances. In 'B', the offending statement was taken in the form of a question and answer. In other words, the statement made by the accused which related to the events of Rahmat's visit on 13 April 1982 was given in just one answer. On the other hand, in 'A', the accused was thoroughly cross-examined by the learned Attorney-General. He was questioned and he stated in detail all that had taken place on 13 April 1982.

After considering the totality of the underlined portions of 'A' and 'B', in my opinion, the offending contradictions are not substantial and cannot be said to be altogether irreconcilable. On the whole, the two statements can easily be reconciled with one another except the contradiction where the accused said Rahmat came at 5.00 p.m. when he was at home, and in 'B' when he stated he returned at 4.30 p.m. and was told by his wife that Rahmat came at 3.00 p.m. But, the fact that Rahmat made the first visit is confirmed, the only area of dispute is the time of his first visit. However, the events on 13 April 1982 are reconcilable.

In his defence, the accused had admitted that his statement made to PW4 in 'B' was not true and gave his reasons why he made the said statement. And in Court on 2nd February 1983, he had also given the same reasons which were rejected by the trial Judge who held, for the purpose of impeachment, that there were material contradictions. Then, on 24 June 1983, he gave another statement Exhibit D7 to Inspector Zaki (PW5) where he reiterated and admitted that his statement to PW4 in 'B' was not true. In think if a witness makes two contradictory statements and the Court finds that he had reverted to the truth in the later statement, it is not desirable that he should be prosecuted for perjury. Here, I would like to quote a passage from the judgment of Buhagiar J in *Haji Yusof bin Keromo v. Public Prosecutor* [1952] MLJ 242 at page 243 where he says:

> Where a witness after having made a false statement, is cautioned by the trial judge and is informed of various circumstances which seem to establish the falsehood of that statement, and the witness after such caution acknowledges that his earlier statement was false and corrects it, it is not desirable to subject such witness to a prosecution for perjury.

For the above reasons, in my judgment, there is reasonable doubt that the accused had intentionally made contradictory statements, one of which he either knew or believed to be false or did not believe it to be true. In the circumstances, I acquit and discharge the accused.

Also found at [1984] 1 CLJ 121